

**A RESOLUTION  
BY CITY UTILITIES**

**A RESOLUTION TO AUTHORIZE THE MAYOR TO ENTER INTO AN AGREEMENT WITH SERENBE DEVELOPMENT CORPORATION, PROVIDING FOR THE NON-STANDARD LOCATION OF CITY OF ATLANTA WATER METERS WITHIN PRIVATE PROPERTY AND PRIVATE RIGHTS OF WAY; TO REQUIRE AND ACCEPT AN EASEMENT FROM SERENBE DEVELOPMENT CORPORATION FOR THE PURPOSE OF ALLOWING THE CITY ACCESS TO ITS WATER METERS; AND FOR OTHER PURPOSES.**

**WHEREAS**, Serenbe Development Corporation ("SDC") plans to construct a total of 280 residential, single-family detached homes in a subdivision located in a Master Planned community, known as Serenbe Community ("Community") in the City of Atlanta ("City"); and

**WHEREAS**, SDC desires to construct at this time 146 residential, single-family detached homes in Phase ID of the Community; and

**WHEREAS**, the proposed single-family homes will be served with potable water from the City; and

**WHEREAS**, the City requires that water meters be located at the "service connection" location either on City property, in the right-of-way or within an easement or license granted to the City; and

**WHEREAS**, SDC proposes to locate water meters, in an amount not to exceed two hundred eighty (280), at locations within the Community to service each individual proposed lot along and within private rights of way and private property, contrary to the City's requirements; and

**WHEREAS**, as a condition of granting SDC's request, the City requires that an Agreement be entered into with SDC, which sets forth the terms of the non-standard location of water meters on private property, including the installation of and responsibility for water system infrastructure, including water meters, and a requirement to grant the City an easement to access its water meters within private property to perform its respective duties related to its water system.

**THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES**, that the Mayor is authorized to execute an appropriate Agreement with Serenbe Development Corporation ("SDC") in substantial form as the agreement attached hereto as Exhibit "A" for the non-standard location of water meters on private property located within the Community.

**BE IT FURTHER RESOLVED**, that the City Attorney is authorized to prepare an appropriate agreement with SDC in substantial form as the agreement attached hereto as Exhibit "A" for the non-standard location of water meters on private property located within the Community, which specifically grants the City an appropriate easement to allow the City to enter onto the subject

private property, now belonging to SDC, for the purpose of performing all necessary duties related to the City's water system located on the private property ("Easement").

**BE IT FURTHER RESOLVED**, that the City's acceptance of the Easement shall be deemed to occur upon the final execution of the Agreement.

**BE IT FINALLY RESOLVED**, that the Agreement will not become binding upon the City and the City will not be liable or obligated under it until it has been duly executed by SDC, executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to SDC.

## AGREEMENT

This AGREEMENT ("Agreement") is entered into this 3rd day of March 2006, between **Serenbe Development Corporation ("SDC")**, a Georgia corporation, and the City of Atlanta ("City"), a Georgia municipal corporation.

### **BACKGROUND:**

Section 154-66 of the City's Code of Ordinances regarding the City's water system provides that a "service connection" is the point of water delivery to a premises where the water meter is normally located and where the City's responsibility ends and the water customer's responsibility begins; and

The City typically requires that water meters be located at the "service connection" location to be on City property, in the right-of-way or within an easement or license granted to the City; and

**SDC** is developing **Serenbe Community**, in Land Lots 44, 45 and 46, 8th District, a mixed-use planned development community ("Community"), currently consisting of **two hundred eighty (280)** residential lots, located in Fulton County, Georgia, and in which area water service is provided by the City; a description of the entire property being attached hereto and incorporated herein by reference as Exhibit "1"; and

In this phase (Phase ID, aka Phase 2)), **SDC** proposes to locate up to one-hundred **forty-six (146)** water meters at locations different than the service connection location, to allow each meter to be located on an individual lot.

**SDC**, as part of the proposal, will install water-mains running to fire hydrants as per **SEI drawing 1 dated February 27, 2006**. Water meters will be located at various points along the water main to service the lots. **SDC** will grant an easement for city use to be recorded and shown on the subdivision's final plat.

Accordingly, the City and **SDC** agree as follows:

1. **Construction of Water System; Location of Meters.** Except as it may be modified pursuant to Section 3.1 of this Agreement, the water system for the Subdivision will be constructed in accordance with the Plans attached as Exhibit A, entitled **Overall Water Distribution Plan – Serenbe Phase ID**, prepared by **SEI**, dated **February 27, 2006**. The water system for the Community will contain individual water meters at the locations shown on Exhibit A. The City agrees that each individual water meter will be owned, maintained, controlled and read by the City or its representatives at the locations set forth on Exhibit A for the purposes of rendering bills to each individual property owner for its respective

and independent water use. SDC agrees that the City or its representatives shall have the authority to enter the Community to read, maintain, remove, replace, repair, dispose of, exercise its control over, plug meter or cut off water services, or otherwise perform all necessary and appropriate actions over all City meters, as such relates to the City's general functions in the provision of water service ("Water Services"), and this Agreement constitutes a right of entry, license and agreement by SDC that the City or its representatives are authorized to enter such Community and that entry will not constitute a trespass to perform its Water Services. SDC agrees, prior to the sale of any lots and water service to any residence being established, to place within the recorded Declaration of Covenants and Restrictions applicable to the Community a covenant that each property owner and the Homeowners Association: (i) acknowledges the City's or its representatives' license to enter the Community, including all privately owned individual lots, to perform Water Services, (ii) acknowledges the applicability of the City's Code of Ordinances to each residence with respect to Water Services provided to it and water infrastructure located within the Community; (iii) acknowledges that Water Services provided to the Community are governed, in addition to the City's Code of Ordinances and applicable law, by this Agreement, and a copy of this Agreement shall be attached to and recorded with the covenants; (iv) acknowledges that the water lines between the meter and the residence or the meter and a non-residential, Homeowners Association outlet must be maintained and repaired by the resident or the Homeowners Association in accordance with all applicable laws and specifications for water system infrastructure; and (v) acknowledges that the Homeowners Association shall indemnify the City from all damage claims resulting from the installation, maintenance and access to the meters that are located within the Community. SDC further agrees to record an appropriate easement or easements in favor of the City applicable to the Community, including all privately owned individual lots, granting the City ingress and egress for pedestrian and vehicular traffic for the purpose of providing Water Services within the Community. Said easement(s) shall be recorded as part of the final plat of subdivision for **Serenbe Community**.

2. **"Service Connection; Infrastructure Responsibilities.** The "service connection" location for the Community will not be located where any individual water meter is located. Instead, the "service connection" location will be at the point of the water system on the **northwest corner of the intersection of Atlanta-Newnan Road and Selborne Lane** with valves ("Valves") as shown on Exhibit A, so that the City's responsibility for the public portions of the water system includes the Valves. SDC agrees that it is entirely responsible, at its expense, for the construction of all water services infrastructure located immediately after the "service connection" and throughout the Community. The City's approval of Exhibit A does not encompass an approval that the materials proposed to be installed in the Community in the form of water services infrastructure, except for materials identified on the Exhibit A as being installed per City or County requirements or regulations, are fit or appropriate for their intended use (e.g. non-standard pvc pipe, etc.).

### 3. Miscellaneous:

- 3.1. **Future Modifications to Exhibit A Authorized.** Should the Community be modified in the future so as to alter or increase the land area and number of individual residential water meters within the **Serenbe Community** development beyond that set forth in Exhibit A, the provisions of this Agreement shall also apply to said modified area and associated individual water meters, provided the water system plan for said modified area has been approved by the City's Department of Watershed Management and further provided the total number of individual water meters at **Serenbe Community** shall not exceed **two hundred eighty (280)**. In the event of such modification, **SDC** agrees to comply with all requirements of this Agreement relating to such modified land area or number of individual residential water meters, including, but not limited to, recording an amended Declaration of Covenants and Restrictions and easement, as contemplated under the Clause titled "**Construction of Water System; Location of Meters**".
- 3.2. **Binding Effect.** This Agreement will inure to the benefit of and be binding upon **SDC** and the City, their legal representatives and permitted successors and assigns.
- 3.3. **Severability.** In the event any provision in this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, that will not effect the remainder of this Agreement, and the remaining provisions of this Agreement will continue in force and effect to the extent as would have been the case had the invalid or unenforceable provisions of this Agreement had never been a part of this Agreement.
- 3.4. **Applicable Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Georgia.
- 3.5. **Forum Selection Clause.** The City and **SDC** agree that any judicial review of any claim arising under or concerning this Agreement must be brought in Fulton County, Georgia. Accordingly, the parties fix venue and jurisdiction for any claim concerning this Agreement in Fulton County, Georgia.
- 3.6. **Ethics: Gratuities And Kickbacks.**
- 3.6.1. **Gratuities and Kickbacks.** The right of **SDC** to proceed under this Agreement may be terminated if, after notice and hearing, City determines that **SDC**:

3.6.1.1.offered or gave a gratuity or kick-back (e.g. an entertainment, fee, commission, compensation of any kind or gift) to an officer, official, or employee of City; and

3.6.1.2.intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

3.6.2. **Rights and Remedies.** The rights and remedies of City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

3.7. **Contingent Fees.** SDC warrants that it has not employed or retained any company or person, other than a bona fide employee, contractor, or legal counsel working for it, to solicit or secure this Agreement; and that SDC has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for it, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, and upon a finding after notice and hearing, City will have the right to terminate this Agreement, and collect from SDC the full amount of such fee, commission, percentage, gift or consideration.

3.8. **Further Acts.** SDC agrees to perform any additional acts and execute and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Agreement.

**CITY:**

**SERENBE DEVELOPMENT  
CORPORATION**

\_\_\_\_\_  
**MAYOR**

\_\_\_\_\_  
**Name: Stephan D. Nygren  
Title: President**

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**MUNICIPAL CLERK (Seal)**

\_\_\_\_\_  
**Name: S. Rox Green  
Title: Secretary**

**APPROVED:**  
  
\_\_\_\_\_

**APPROVED AS TO FORM:**  
  
\_\_\_\_\_

**COMMISSIONER, DEPARTMENT OF  
WATERSHED MANAGEMENT**

**CITY ATTORNEY**

## EXHIBIT “1”